

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                                 |   |                                   |
|---------------------------------|---|-----------------------------------|
| PHILIP MORRIS USA, INC.,        | ) |                                   |
|                                 | ) |                                   |
| Plaintiff,                      | ) |                                   |
|                                 | ) | Civil Action Case No.: 08-028 SLR |
| v.                              | ) |                                   |
|                                 | ) |                                   |
| TABOCA AS and, NORDIC           | ) |                                   |
| AMERICAN SMOKELESS, INC., f/k/a | ) |                                   |
| TABOCA USA, INC.,               | ) |                                   |
|                                 | ) |                                   |
| Defendant,                      | ) |                                   |
|                                 | ) |                                   |
|                                 | ) |                                   |

**DEFENDANT NORDIC AMERICAN SMOKELESS, INC.'S  
MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT  
OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendant Nordic American Smokeless, Inc. ("Defendant"), to respectfully request dismissal of the above captioned matter or, in the alternative, entry of judgment on behalf of Defendant as a matter of law.

1. Defendant hereby incorporates the Memorandum of Law in Support of this motion filed concurrently herewith.

WHEREFORE, Defendant respectfully requests that the Court dismiss the above captioned matter or, in the alternative, enter judgment on behalf of Defendant as a matter of law.

McCARTER & ENGLISH, LLP

/s/ Andrew S. Dupre

David A. White (DE Bar Id. #2644)

Andrew S. Dupre (DE Bar Id. #4621)

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(302) 984-6300

*Attorneys for Defendant Nordic American  
Smokeless, Inc.*

Dated: April 15, 2008

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FOR THE DISTRICT OF DELAWARE

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| PHILIP MORRIS USA, INC.,        | ) | Civil Action Case No.: 08-028 SLR |
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| Plaintiff,                      | ) |                                   |
|                                 | ) |                                   |
| v.                              | ) |                                   |
|                                 | ) |                                   |
| TABOCA AS and, NORDIC           | ) |                                   |
| AMERICAN SMOKELESS, INC., f/k/a | ) |                                   |
| TABOCA USA, INC.,               | ) |                                   |
|                                 | ) |                                   |
| Defendant,                      | ) |                                   |

**ORDER GRANTING MOTION TO DISMISS**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_ 2008; upon consideration of Defendant Nordic American Smokeless, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint or, alternatively, Motion for Summary Judgment;

IT IS HEREBY ORDERED that the above-captioned case is dismissed.

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J.

**CERTIFICATE OF SERVICE**

I, Andrew S. Dupre, hereby certify that on April 15, 2008, I caused a copy of the foregoing **Motion to Dismiss Plaintiff's First Amended Complaint or, alternately, Motion for Summary Judgment** to be served upon all counsel of record via CM/ECF Filing.

McCARTER & ENGLISH LLP

/s/ Andrew S. Dupre  
Andrew S. Dupre (DE Bar Id. No. 4621)